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FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON

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Honorable Howard M. Metzenbaum, Chairman
Subcommittee on Antitrust, Monopolies
and Business Rights
Committee on the Judiciary
United States Senate
308 Hart Senate Office Building
Washington, D.C. 20510-6275

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APR 16 1993

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Dear Chairman Metzenbaum:

Thank you for your letter regarding the Commission's implementation of the rate regulation and program access provisions of the Cable Television Consumer Protection and Competition Act of 1992, in which you express concern regarding

Honorable Howard M. Metzenbaum

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filed with the Commission. In the event that a programmer declines to provide

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United States Senate

COMMITTEE ON THE JUDICIARY
WASHINGTON, DC 20510-6275

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March 19, 1993

The Honorable James Quello
Acting Chairman
Federal Communications Commission
1919 M St., NW
Washington, DC 20054

Dear Jim:

As you know, the Cable Television Consumer Protection Act of 1992 is designed to protect consumers against monopolistic pricing by cable operators. I am writing to underscore my view that the Cable Act gives the Commission the authority to lower cable rates to competitive, market levels. In addition, I want to urge you to take action to counteract efforts by some in the cable industry who are trying to circumvent the new law even before the Commission's implementing regulations are in place.

The Cable Act was passed because Congress concluded that cable operators were using their monopoly power to charge rates that greatly exceeded competitive levels. The General Accounting Office found that since deregulation at the end of 1986, rate increases in the cable industry had tripled the rate of inflation. The Consumer Federation of America found that cable operators were overcharging consumers by as much \$6 billion annually. A Consumers' Research study found that the per-channel rate for cable service is one-third lower in the few areas around the country that benefit from cable competition. And a staff study by the Department of Justice found that cable's market power accounted for up to 50% of the rate increases imposed since deregulation.

The clear mandate of the 1992 Cable Act is that consumers should be protected against cable rates that exceed competitive levels. The FCC must eliminate the monopoly component of the rates charged by cable operators. As the Commission moves toward adopting regulations to implement that mandate, I wish to underscore four concerns.

First, I want to make it clear that the 1992 Cable Act gives the Commission clear authority to roll back rates to competitive levels. Section 623(b)(1) of the Act makes it clear that the Commission's regulations must ensure that consumers do not pay

~~more for cable than they would otherwise pay if there were no cable~~

monopoly pricing by cable operators must stop. Cable operators are entitled to earn reasonable profits. The 1992 Cable Act now prohibits them from earning monopoly profits.

Rates for cable programming service were already too high when Congress passed the Cable Act last fall. Comments filed to the Commission by both consumer groups and local government officials suggest that current cable rates exceed competitive levels by approximately 30%. These numbers are consistent with evidence which served as the basis for the 1992 Act. If the Commission determines that current cable rates do exceed competitive levels, it has an obligation to develop a rate regulation formula which will result in consumers paying market prices for cable service.

Second, this obligation to ensure competitive market rates covers both basic cable service and higher tiers of cable programming service. In anticipation of legislation, many cable operators moved popular cable channels off the basic tier onto more expensive tiers of service in an effort to avoid regulation of those channels. Congress responded by granting the Commission authority to prevent cable operators from charging unreasonable rates for these higher tiers of service. In addition, section 623(h) of the Act explicitly instructs the Commission to "prevent evasions" of the Act, "including evasions that result from retiering...". The Conference Report to the Act expressed concern that "retiering may result in the evasion of the Commission's regulations to enforce the bill. The conferees expect the Commission to adopt procedures to protect consumers from being harmed by any such evasions."

In short, Congress devised a structure designed to prevent cable operators from moving popular cable program channels onto higher tiers of service in order to charge super-competitive prices for those channels. Once again, the Commission's obligation is clear. It must develop a formula -- and, in this instance, a rate complaint procedure -- that results in consumers paying competitive, market prices for cable programming services.

Third, a number of cable operators have imposed significant rate hikes upon their subscribers during the transition period between Congressional enactment of the new law and adoption of the FCC regulations implementing the Act. I am very concerned that these rate increases constitute an attempt to evade the Act.

For example, in my state of Ohio, the Miami Valley Cable Council reports that many basic cable subscribers in the Dayton

Continental Cablevision has told its consumers that the increases are necessary "to fulfill the expectations of this legislation."

I am astonished that a cable company would blame a new round of rate increases on legislation that was designed to keep rates down and on regulations that have not even been written. However, press reports indicate that many other cable operators are attempting to inflict rate increases on their subscribers before the FCC's rate regulations go into effect. I urge you to give special scrutiny to rate increases imposed by cable operators after passage of the 1992 Cable Act. I believe the Commission should strongly consider nullifying post-enactment rate increases by using its authority to prevent evasions of the Act.

Finally, I wish to note my concern regarding the tone and direction of the Commission's Notice of Proposed Rule Making on the program access provisions of the Act. I am concerned that the Commission's rules in this area may fail to bring about the objective of spurring price and service competition in the cable industry. Congress sought to establish an expedited procedure within the FCC which would enable competing multichannel video program distributors to prevent cable operators from thwarting competition by leveraging their control over popular program channels. The Commission must be careful to avoid adopting rules which will be too burdensome for cable's competitors, and too tolerant of the kind of exclusive dealing arrangements which have hurt consumers by inhibiting the development of competition in cable.

Let me close by commending you for the Commission's thorough and expeditious effort to implement the 1992 Cable Act. I appreciate your attention to the concerns which I have raised.

Very sincerely yours,

A handwritten signature in black ink, reading "Howard M. Metzenbaum". The signature is fluid and cursive, with a large, sweeping flourish at the end.

Howard M. Metzenbaum
Chairman,
Subcommittee on Antitrust,
Monopolies and Business Rights